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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20580

In the Matter of	)	
	)	CC Docket No. 93-22
Policies and Rules Implementing the	)	RM-7990
Telephone Disclosure and Dispute	)	
Resolution Act	)	

COMMENTS OF THE INFORMATION INDUSTRY ASSOCIATION

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Summary

The Information Industry Association ("IIA") offers comments which respond to certain of the Commission's proposals, as well as raises unaddressed key issues which could have serious impact on the future of the pay-per-call industry. Overall, IIA commends the Commission on the serious and realistic regulatory proposals it offers to implement the Telephone Disclosure and Dispute Resolution Act ("TDDRA").

IIA believes that the Commission's definitions of the pay-per-call industry require clarification to ensure that the intention of TDDRA and the public interest is fully met. The Commission also should craft rules which flexibly outline the compliance enforcement obligations of carriers when serving as billing entities, as well as recognize the varying roles other billing entities may have with regard to pay-per-call providers.

IIA encourages the Commission to use this opportunity to assert its authority to preempt inconsistent state regulations affecting the pay-per-call industry. The Commission also should anticipate new technologies and not restrict pay-per-call services to 900 service access codes if subsequent future harm could occur in administration of the North American Numbering Plan or deployment of new telecommunications -- potentially non-common carrier based -- services.

The Association continues to voice its support for consumer, as well as non-consumer initiated blocking and agrees with the preliminary findings of the Commission that regular local and long distance telephone service should not be disconnected as a result of a consumer's failure to pay for their pay-per-call service charges. In addition, IIA urges the Commission to balance carefully the additional requirements the TDDRA may impose on carriers with regard to compliance requirements against the

crafted to assure that pay-per-call providers are not unfairly saddled with charges that do not reflect the actual costs involved, nor that any special access charge arrangement be imposed. Finally, IIA agrees that certain limitations may be appropriate for the use of 800 numbers and the industry would be well-served by a Commission recommendation for record retention requirements.

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COMMENTS OF THE INFORMATION INDUSTRY ASSOCIATION

The Information Industry Association ("IIA") is pleased to offer these comments on the Federal Communications Commission's ("FCC" or "Commission") proposals in the above-captioned proceeding.[1] IIA's comments respond to certain of the Commission's proposals, as well as raise key issues not addressed by the FCC which could have serious impact on the future of the pay-per-call industry. Overall, IIA commends the Commission on the serious and realistic regulatory proposals it offers to implement the Telephone Disclosure and Dispute Resolution Act ("TDDRA").[2] By addressing the concerns of IIA, and of other participants in the pay-per-call industry, the Commission will assure the continued growth and prosperity of this important emerging industry.

IIA is a trade association representing over 500 companies pursuing business opportunities associated with the creation, distribution and use of information. Since 1968, IIA has grown to include entrepreneurs and established companies that use a wide range of communications channels, including pay-per-call services, delivered via telecommunications carriers to distribute information worldwide.

Operating under the umbrella of the full organization, IIA's Voice Information Services Division ("VISD") includes representatives of all types of businesses

[1]Policies and Rules Implementing the TDDRA, CC Docket No. 93-22, RM-7990 (released Mar. 10, 1993) ("Notice").

[2]TDDRA, Pub. L. No. 102-556, 106 Stat. 4181 (1992).

participating in the pay-per-call services marketplace, including information providers, service bureaus, common carriers (both local and interexchange), equipment suppliers and others. With the guidance of company representatives of the VISD, IIA has participated actively in matters involving the pay-per-call industry before Congress, with federal regulatory agencies and at the state and local level.

The marketplace for the delivery of information services via pay-per-call numbers (most notably 900) is marked by exceptional growth and diversity.[3] It offers a wide range of services that are easy to use, accessible to mass markets and responsive to the public's information needs. Unfortunately, the great potential of pay-per-call services has been threatened by a small segment of unscrupulous players who have cheated the public.

The FCC responded emphatically to a variety of issues in the pay-per-call industry in 1991 by initiating a rulemaking proceeding which culminated in the adoption of the rules being reviewed in the instant proceeding.[4] Throughout the earlier proceeding, IIA encouraged the Commission to move forward with a clear focus on the realities of the pay-per-call information marketplace.[5] Today, the Commission seeks

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[3]TDDRA, sec 1(b)(1-2) ("The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers. ...(m)any pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public").

[4]See generally Policies and Rules Concerning Interstate 900 Telecommunication Services, CC Docket No. 91-65, Report and Order, 6 FCC Rcd 6166 (1991), recon., FCC 93-88 (adopted Feb. 11, 1993).

[5]See generally IIA Comments, Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65 (filed Apr. 24, 1991) and IIA Reply Comments, Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65 (filed May 24, 1991).

comment on a variety of rules changes necessitated by the adoption of the TDDRA to assure compliance with a congressional mandate for adequate consumer protections and clear regulatory oversight of this burgeoning business.

I. The FCC's Definitions of the Pay-Per Call Industry Require Clarification

IIA generally commends the Commission on its proposal that pay-per-call services will be limited, by definition, to "900" exchanges.[6] This definition broadly describes services that may be offered by pay-per-call providers, the nature of the difference in pay-per-call services from other services and clearly omits from pay-per-call regulation those services to which a consumer may have presubscribed. As noted below,[7] IIA does have serious concerns about the long-term ramifications of using only the "900" service access code for pay-per-call services. However, the immediate result of the FCC's proposals will undoubtedly minimize confusion about when or if a consumer has dialed into a service for which additional charges may be incurred beyond regular toll or connection charges.

In addition, IIA is concerned about the Commission's proposed interpretation of the language "presubscription or comparable agreement."[8] Under section 228(i)(2) of the Communications Act, as amended by the TDDRA, the definition of "pay-per-call services" does not include "any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service."[9] The Commission has indicated that it would consider additional language to require a more narrow definition of "presubscription or comparable

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[6]<u>See</u> FCC Proposed Rule sec. 64.1501.

[7]<u>See</u> page 13 <u>infra</u>.

[8]Notice at fn. 5.

[9]47 U.S.C. 228(i)(2).

arrangement" as a contractual agreement established prior to the initiation of a pay-per-call service between a provider of pay-per-call services and a customer.[10]

This definition could have the effect of sweeping within the purview of Commission regulation a wide range of information services, delivered via telephone, which are charged to a caller's credit card pursuant to authorization given during the course of the call.[11] Congress clearly did not intend to subject the "presubscribed" marketplace, which could dwarf in size the market for conventional 900 services, to new regulation under the TDDRA. A narrow definition of "presubscription or comparable arrangement" should be avoided.

The exclusion of services paid for by "presubscription or comparable arrangement" originated in a floor amendment, offered by Senator Daniel Inouye, to the Senate version of the legislation.[12] As reported by the Senate Commerce Committee, S. 1579, the 900 Services Consumer Protection Act, included an extremely broad definition of pay-per-call services subject to regulation ("any information service, provided by telephone, which receives payment, directly or indirectly, from each person who calls that service by telephone").[13] However, the explanation provided in the

[10]Notice at para. 8, fn. 5.

[11]Such unduly narrow definition would not have this effect immediately, since the statutory definition of "pay-per-call services" is limited to those "accessed through use of a 900 telephone number or other prefix or area codes designated by the [Federal Communications] Commission...." 47 U.S.C. 228 (1)(C) and the Commission has proposed to designate only the 900 access code. IIA fears, however, leaving the narrow definition of "presubscription or comparable arrangement" in place could, in effect, empower the FCC, through its designated authority, to sweep this broad category of services under FTC jurisdiction, contrary to Congressional intent.

[12]See 137 Cong. Rec. S15432 (daily ed., Oct. 29, 1991) (amendment no. 1289 to S. 1579. This exclusion was unnecessary under the House bill, which covered only services billed and collected by a common carrier or local exchange carrier); see also sec. 227(d)(1)(C) (proposed addition in Title I of H.R. 3490).

[13]S. 1579 (Cal. No. 275), section 4(1) (102nd Cong., 1st Sess.) (1991).

committee report reveals that the committee had a much narrower category of services in mind. As the report explains:

> The term "pay-per-call service" is defined to mean any information service provided by telephone where the calling party incurs a charge merely by dialing an information service's access number. <u>The Committee does not intend for this definition to include services where the customer pays by credit card or check.</u> In those situations, the customer knows the charges he or she is incurring, has the opportunity to decline the acceptance of the service or product, and must take affirmative steps to pay for the service or product. (emphasis added).[14]

While the legislative history offers no explicit explanation of the amendment Senator Inouye's offered to his bill on the Senate floor less than two weeks after this report was filed, it clearly appears that one of its objectives was to incorporate the limitations expressed in the committee report on the definition of pay-per-call services subject to regulation. Since the "presubscription or comparable arrangement" exception was carried forward from Senator Inouye's amendment to S. 1579 into the final version of the TDDRA,[15] it must be assumed that the same limitations apply to the enacted statute.

The Commission's inclination to expand its definition to encompass credit card authorization made during the call is clearly inconsistent with this legislative intent. Where Congress wanted to exclude from further regulation "services where the customer pays by credit card," the suggested language would claim jurisdiction over these transactions, so long as the customer provided the credit card number during the course of the call. In effect, this definition would limit the exception to true

[14]S. Rep. No. 102-190 at 12, 102nd Cong., 1st Sess., 137 Cong. Rec. (daily ed. Oct. 16, 1991).

[15]The legislative vehicle for final passage of the TDDRA was H.R. 6191, although the context of the enacted legislation was identical to H.R. 3490 and S. 1579. <u>See</u> 142 Cong. Rec. H11934 (daily ed. Oct. 5, 1992) (colloquy of Representatives Al Swift and Norman Lent).

presubscription agreements entered into before initiation of the call, thus reading the phrase "or comparable arrangement" out of the statute altogether.

The reasons Congress decided to exclude credit card transactions from TDDRA regulation are obvious and compelling. The consumer protection issues which motivated enactment of the TDDRA derive from two defining characteristics of conventional 900 services: the fact that the charge is imposed automatically upon connection of the call, and the fact that this charge is generally billed to the customer by a local or long-distance telephone company.[16] Both of these characteristics were new and unfamiliar to many consumers. A small minority of pay-per-call services exploited this unfamiliarity to the customer's detriment. By contrast, services delivered via telephone and billed to a customer's credit card offer another decision point: whether or not to supply the credit card number to the information service provider. Services billed outside the context of the telephone bill are unlikely to lead a relatively unsophisticated customer to fear that he or she will lose telephone service if a charge is contested. Perhaps most importantly, a customer who pays for a telephonebecame Title III of the TDDRA.

If the Commission chooses to follow the path suggested in footnote 5 of the Notice, an enormous range of information services delivered via telephone will fall under its regulatory jurisdiction.[18] In particular, many business-oriented services rely upon credit card billing for delivery of information by audiotext or facsimile. The proliferation of these services is, in part, a reaction to the negative image of conventional pay-per-call services, an image which has led many businesses to block access by their employees to pay-per-call services from office telephones. In order for employees at these companies to obtain the benefits of timely, convenient access to information via telephone, either a formal presubscription arrangement or a credit card billing option is essential. The latter is especially vital for spontaneous, sporadic access to pay-per-call services, a scenario in which the advantages to customers of such services -- their timeliness, ubiquity, and ease of access -- are at their zenith.

Applying the TDDRA to services paid by credit card would have far-ranging and drastic consequences. These consequences are by no means limited to imposing on such services prophylactic consumer protection requirements, such as advertising regulations and preamble requirements, whose marginal utility is extremely dubious when the customer cannot be billed unless and until he or she supplies a credit card number to the service provider. More significantly, implementing an expanded definition could virtually outlaw the use of 800 and other toll-free numbers to sell virtually any product or service, except to customers who have entered into a formal presubscription agreement before placing the call.[19] This is not what Congress intended, and may well not be what the Commission intends either, but it does appear to be a consequence of the definition of "presubscription or comparable arrangement" suggested in the Notice.

The Commission must assure that if it chooses to define "presubscription or comparable arrangement," the definition specifically embraces, rather than implicitly excludes, services which are paid for by credit card number supplied by the caller during the course of the call. While some actions taken by consumers during the course of a call -- for instance, failing to press a key during a stated time interval or keying in a response -- may be insufficient to establish a contractual agreement to pay for the services, the supplying of a 16-digit credit card number and expiration date, by voice or keypad, is a much different action. Cooperating in credit card billing is an action whose significance and consequences are much clearer to the vast majority of consumers.

II. FCC Rules Must Flexibly Outline the Compliance Enforcement Obligations of Carriers

The Commission has chosen not to specify procedures that carriers might use to terminate pay-per-call services because of suspected violations of the statute or regulations by providers. However, the statute seems to require that these rules be specified.[20] Although the Commission need not spell out the procedures in minute

[19]Title I, TDDRA amends the Communications Act to forbid charges for information delivered via 800 numbers "unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call..." 47 U.S.C. 228(c)(6)(C) (emphasis added).

[20]See 47 U.S.C. sec. 228(c)(3) ("A common carrier...shall terminate, in accordance with procedures specified in (FCC) regulations, the offering...") (emphasis added).

detail,[21] it should provide sufficient guidance to guarantee fundamental fairness to information providers which are interested in contesting the determination that their programs violate regulations promulgated under TDDRA in some way. These guidelines should include written notice and specification to the pay-per-call provider of the reason for termination, a timetable under which such actions may be initiated, opposed and concluded, as well as appropriate appeal procedures.[22]

Under the terms of the TDDRA,[23] carriers are given qualified immunity for termination of delivery of a pay-per-call provider's service unless there is a showing of a lack of good faith. The Commission also should specify the redress appropriate for the pay-per-call provider to take if she feels there is a lack of good faith, as well as whether any remedies would be appropriate to the pay-per-call provider in the event of a carrier's erroneous finding.

While IIA recognizes the importance of assuring compliance and adherence to role that carriers should assume in compliance rather than unnecessarily broad authority over content.[24]

IIA also is concerned that the Commission is considering requiring that carriers obtain verification that "both the desirability and the practicality of incorporating into federal pay-per-call regulation a requirement that charitable institutions soliciting contributions through an interstate pay-per-call format demonstrate that they meet the solicitation requirements for each state in which their solicitation may occur"[25] Not only would this requirement create unnecessary delays in the prompt availability of new pay-per-call services, but it would create an unfair administrative burden for carriers. Carriers are in the business of carrying telecommunications information across their lines -- they are not in the business of verifying or maintaining records about the tax exempt status of their customers. IIA urges the Commission to assiduously avoid so impractical a requirement that would virtually eliminate all possibility of tax exempt usage of the pay-per-call industry. Compliance with existing state regulations already imposes a substantial burden on carriers. Codification of such an additional requirement appears unfounded.

III. The FCC's Preamble and Other Requirements Should Allow for Preemption of Inconsistent State Regulation

The Commission has proposed deleting sec. 64.711 of its rules in the interest of avoiding duplication between its rules and those promulgated by the FTC.[26] IIA commends the Commission's interest in avoiding duplicative, and potentially confusing,

[24]For example, IIA supports carrier review of advertising for appropriate price information, but would not support carrier review of the specific value of the content of the pay-per-call program.

[25]Notice at para. 46.

[26]Notice at para. 12.

regulation of the pay-per-call industry. However, the Association cautions that the Commission's failure to specify preamble requirements, does not relieve the FCC from overall responsibility and authority to preempt inconsistent state regulation, especially as that regulation may relate to preamble requirements. Although the Commission does not specifically address the issue of preemption in its proposals to modify its existing rules for compliance with TDDRA, IIA believes that the public interest requires

The availability of a competitive enhanced services marketplace -- of which the pay-per-call industry is a part -- is threatened both by state public utility regulation of enhanced service providers' intrastate offerings, and by state efforts to claim jurisdiction over interstate offerings. A national patchwork of regulations for the pay-per-call industry will reduce customer access to information services by making it difficult for conscientious information providers to reliably offer their services on a national basis. Further, absent strong federal regulatory assertions -- as states test the jurisdictional waters -- the development of valuable new information services to meet customer demands for timely, accessible information will be thwarted.

The case for immediate and unequivocal preemption is especially strong today as the FCC and FTC conclude extensive rulemaking proceedings for the adoption of comprehensive rules governing the interstate pay-per-call marketplace.[31] The American public is served best when pay-per-call services, like other businesses, are allowed to grow, develop and diversify with a minimum of intrusive government regulation.

In adopting these rules, the Commission must recognize the importance of problems caused by a lack of uniformity in policies on issues ranging from blocking to disclosure requirements. Inconsistent regulatory guidelines make it difficult or impossible to maintain the pay-per-call marketplace as an ubiquitous forum of information distribution and exchange.

IV. The FCC's Rules Should Anticipate New Technologies and North American Numbering Plan Assignment Availability Concerns

Although IIA believes that the FCC is the most qualified agency to determine

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significantly impede the enforcement of this section or other Federal statutes") (emphasis added).

[31] See Notice and Proposed Telephone Disclosure Rule, FTC File No. R311001 (released Mar. 9, 1993).

encourages the Commission to adopt rules which track the compliance and disclosure regulations proposed by the FTC,[34] but not to limit the exchanges that can or may be used for pay-per-call services in the future. American consumers have learned to use zip codes on their mail, have keyed in area codes in regions of the country where code splits have been introduced or numbering needs have required them, and have come to accept bar codes in their grocery stores instead of individual product pricing -- with regulatory disclosure requirements and continuing industry-initiated consumer education, consumers can understand which calls will incur additional charges. The Commission should not restrict future technological capabilities for the mere simplicity of management a single "900" special access code affords.

IIA continues to be concerned that the proposed rules do not adequately consider uses of pay-per-call services that are not voice-based. Data transmissions between computers, facsimile verification and information delivery services simply do not sound like services which need preambles or reasonable opportunities to hang up. As long as regulation requires an audible preamble, applications involving calls from computers (including facsimile machines) to 900 numbers via modem will remain on the drawing board. Consumers thus will be denied the benefits of immediate, spontaneous access to on-line databases, software or data downloading, modem-facsimile transactions, and other potentially attractive products and services, except,

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[34]Proposed Telephone Disclosure Rule, FTC File No. R311001, secs. 308.3, 308.5, and 308.7 (released Mar. 9, 1993). IIA has raised a number of serious reservations about the specific requirements contained in the aforementioned FTC Proposed Rules, however, to the extent that coordination and cooperation between the FTC and FCC can ensure consistent and responsive rules and regulations for consumers and the pay-per-call industry, the Association would support a single standard of performance.

perhaps, in a presubscription setting.[35] At a minimum, the Commission should guarantee that existing exemptions from preamble requirements for non-voice services must be preserved.

On the telecommunications horizon are opportunities for virtual and collocated expanded interconnection that will allow other providers central office access to switching and routing. The advent of multimedia and wireless services affords additional opportunities for new and innovative services. Other providers may include cable television operators, low earth orbit satellite companies and cooperative ventures between traditional telecommunications providers and other services. Each of these facilities may offer services parallel to pay-per-call in concept -- nearly transparent to the consumer in their use -- but not otherwise linked to the currently-proposed pay-per-call rules. IIA encourages the FCC to adopt rules that are planned to meet the needs of changing and diverse delivery mechanisms for whatever form the pay-per-call marketplace may take in the future.

V. IIA Supports Non-Consumer Initiated Blocking in Cases of Abuse, but Agrees that Regular and Long Distance Telephone Service Should Not Be Interrupted for Non-Payment of Pay-Per-Call Service

From the caller's perspective, two of the key selling points of pay-per-call services are the ubiquity and ease of access to the services. The telephone is the closest thing to a universal appliance in America,[36] and virtually everyone knows how

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[35]See IIA Letter to the Federal Communications Commission, Application of FaxChek Systems for Partial Waiver of Interstate 900 Telecommunications Services Rules, CC Docket No. 91-65 (filed Dec. 19, 1991); see also Order, FaxChek System's Request for Waiver of Section 64.711 of the Commission's Rules, File No. ENF-92-02, DA-92-639 (released May 29, 1992).

[36]Telephone Subscriber Services in the United States, Federal Communications Commission (Apr. 2, 1992) (as of March 1992, 93.8 percent of households in the United States had telephone service).

to use it. Pay-per-call services are a great equalizer, making electronic information services available to the broadest mass market. These services bring the Information Age to every home: not just the households whose residents enjoy the income to purchase a personal computer and the technological sophistication to use one, but to every American with access to a phone. It is this "at-the-doorstep" feature that makes pay-per-call providers easy targets of unscrupulous consumers. One protection -- that in fact can work for both providers and users of pay-per-call services -- is blocking.

Blocking customer access to pay-per-call services can be initiated in a variety of ways. First, restricted access can be the result of a regulatory requirement in a particular jurisdiction that requires presubscription to pay-per-call services or prohibits entirely local pay-per-call services. Pay-per-call access also may be blocked in response to a customer request -- a choice that IIA long has advocated that customers should be able to make. Finally, access by certain customers can be limited by the pay-per-call provider or common carrier -- usually in cases of customer abuse.

IIA encourages the Commission to adopt rules, in this or future proceedings, that specify remedies available to pay-per-call providers when ongoing customer abuses and fraud are evident. Customers are not the only victims of fraud in the pay-per-call industry. The TDDRA clearly acknowledges that "(v)endors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value."[37]

The issue of whether to regulate circumstances under which a customer's access to pay-per-call services may be blocked at the request of a party other than the customer remains unresolved at the state and federal levels. IIA urges the development of a policy that will protect information providers from abusive customer behavior that may be encouraged by the inconsistent liberal adjustment policies implemented by some local exchange companies. Under current practices, a customer may access pay-per-call services repeatedly, over a period of months, and refuse to pay for them without a valid justification.

Certainly, where customers have been misled by false advertising, victimized by poor transmission quality or charged for unauthorized calls, the charges should be forgiven. However, where a customer can have a pay-per-call charge removed from her bill for virtually any reason, the incentives for unscrupulous customer abuse of the system are increased.

This imbalance could be corrected if local exchange companies and others had the power, whether at the request of an information provider or other party, to block customer access to pay-per-call services where a persistent pattern of abuse of the services had been demonstrated. This proposal certainly should include safeguards to distinguish between bona fide disputes over the validity of charges and simple refusals to pay for services legitimately rendered. A consistent national policy in this area will help customers and service providers know clearly where they stand.

In addition, IIA strongly supports customer-initiated blocking options and believes that choice would be maximized if customers could block access to selected 900 exchanges or individual services, while retaining access to others. While selective blocking is not yet technically feasible, to the extent that it may be available, it is a preferred option to blanket blocking.

Ultimately, the choice should be left to the customer, with the narrow exception for involuntary blocking in the case of persistent customer abuse as described above. Rules of the pay-per-call industry should maximize consumer choice, including the consumers' choice to opt out of the marketplace entirely. As Congress ordered, this option should be available to consumers at some point at no charge.[38] In no instance should mandatory presubscription, already rejected by the FCC and several states,[39] be required for access to pay-per-call services.

Further, IIA agrees that in no instance should access to regular local or long distance service be disconnected for failure to pay pay-per-call service charges. In review of the language in the Commission's rules, however,[40] IIA suggests that language be included stating that the carrier may disconnect the consumer's access to "pay-per-call services" for failure to pay for those charges, particularly in the light of evidence of continued abuse.[41] IIA supports the Commission's proposals with regard to interstate collect calls which easily can be abusive and unfair to consumers.[42] Finally, the Commission should use these rules to clarify other options available to providers in dealing with customer abuses. This could include sharing of information about bad risks or even tracking persistent customer fraud.[43]

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[38] See 47 U.S.C. sec. 228(c)(4)(A).

[39] See generally Memorandum Opinion and Order, Petition for an Expedited Declaratory Ruling Filed by the National Association of Information Services, Audio Communications, Inc. and Ryder Communications, Inc., FCC No 93-45 (released Jan. 22, 1993); Project 9089, Information Services Call Restriction, Public Utilities Commission of Texas (1990) (presubscription considered, but rejected in favor of consumer-initiated blocking); Michigan also has considered and rejected a presubscription requirement.

[40] FCC Proposed Rules sec 64.1507.

[41] Cf. FCC Proposed Rules sec. 64.1512.

[42] Notice at para 21. IIA agrees that although these calls "may not fall strictly within the definition of pay-per-call if the collect charges are tariffed, the calls resemble pay-per-call services, not traditional calls," large, unexpected and often unauthorized bills from such operators have further impugned the credibility of the pay-per-call industry.

[43] Cf. TDDRA, sec. 201(a)(2)(J).

VI. The Commission Should Balance Carefully Carrier Billing Restrictions Against the Administrative Burdens Such Requirements May Cause

The Commission has indicated a willingness to impose regulations that would restrict carriers from providing billing and collection services for pay-per-call service providers where the carrier "knows or reasonably should know" the provider is not in compliance with the rules and regulations created under TDDRA.[44] As argued above,[45] IIA is concerned that carriers may become burdened with regulatory oversight responsibilities involving the content of the service for which they should only be required to offer common carriage. In implementing the statutory mandate that expands the billing and collection responsibilities of carriers to monitor compliance with the rules of the FCC and FTC, the Commission should be careful to avoid turning telephone common carriers into "pay-per-call police."

First, as this Commission undoubtedly recognizes, direct billing services may be provided by any number of telecommunications providers, including, but not limited to alternative service providers, competitive access providers or enhanced service providers, or even by billing agents who are not telecommunications providers. Although the FCC fairly has proposed that the billing and collection rules apply to any non-carrier which serves as a billing entity for a pay-per-call service,[46] it is not clear whether the Commission has the authority to so regulate. The lack of certainty of Commission jurisdiction is especially clear for those billing entities which are not common carriers or otherwise subject to FCC regulation.

Further, billing entities -- interexchange companies and third party billers -- do

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[44]47 U.S.C. sec 228(d)(1)(A).

[45]See infra pages 9-11.

[46]See FCC Proposed Rule 64.1511(b).

not always have direct contact with customers because they rely on the relationships between the local exchange carrier and the customer. Through contracts between the pay-per-call providers' billing entities and the local carrier, the customer is not likely to have any direct relationship with the company that must ultimately pay the pay-per-call provider. This arrangement, cumbersome as it may appear, works because local phone companies have caller billing information -- most importantly, name, address, telephone number -- necessary to deliver a bill.

For example, a pay-per-call provider offers its service via a 900 line of a national long distance carrier. The long distance carrier offers to manage the billing and collection for the provider as part of its contractual arrangement. In turn, under a separate contract, the long distance carrier has an agreement with the local phone company that the billing inserts that come to homes of customers in the company's service area include the charges for the pay-per-call service and any other long distance or pay-per-call usage. The customer thus has three concurrent relationships in place: 1) with the pay-per-call provider which she called; 2) with the long distance carrier that is used to access the call and bills for it; and 3) with the local phone company which gets the final bill into the customer's mailbox.[47]

IIA urges that the FCC adopt nothing unduly onerous which could prejudice alternative service providers, competitive access providers or even enhanced service providers which opt to do direct billing. Similarly, the billing and collection responsibilities of local exchange, interexchange or long distance carriers should not be expanded.

[47]IIA also notes that the multiple relationships involved in delivering a pay-per-call service and billing are largely transparent to the customer.

VII. Cost Recovery Regulations Should Be Carefully Crafted to Assure that Pay-Per-Call Providers Are Not Unfairly Burdened

IIA recognizes and agrees with the Commission that certain costs will arise as associated with its proposed regulatory requirements. As Congress directed,[48] the Commission requires that no local or long distance carrier shall attempt cost recovery from ratepayers.[49] However, IIA is concerned that the Commission's proposal appears to condone the adoption of an access charge-like pricing scheme or a regime that might require wasteful reconfiguration of pay-per-call services when carriers attempt to recoup their "restricted costs."

Pay-per-call providers offer enhanced services and should not be singled out for feature group access rates or other arrangements inconsistent with their use and needs